IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.8582 OF 2003

Bharat Purohit Mithaiwala
Near GP No.27/1-27/2
Near Level Crossing No.28,
Aarey Rd. Goregaon (W)
Mumbai--400 062. : Petitioner

V/s.

1. Union of India, through the
Western Railway Administration,
Sr. Section Engineer (Land),
Lower Parel, Mumbai--400 013.
2. The Estate Officer & Divisional
Engineer (Estate), Western Rly.,
Mumbai Central, Mumbai--400 008. : Respondents

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Mr.B.P. Panday for the petitioner.

Mr.Suresh Kumar for the respondents.

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CORAM : S.A. BOBDE, J.
February 4, 2005.

ORAL JUDGEMENT

1. Rule, returnable forthwith.

Mr.Suresh Kumar waives service of rule on behalf of the respondents.

Heard by consent.

2. The petitioner has challenged the order of the learned 2nd Addl. Principal Judge, City Civil Court, Mumbai, dated 3.10.2003 in Misc. Appeal No.201 of 2003 by which the appellate Court has upheld the eviction order dated 25.7.2003 directing the petitioner to remove the unauthorised construction from the railway land.

3. Mr.Panday, learned counsel for the petitioner, submitted that the entire proceedings initiated by the Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, hereinafter referred to as the "Act", is vitiated since the petitioner’s structure was in existence in the year 1978. According to the learned counsel, the respondents were not entitled to issue a notice to the petitioner to remove his unauthorised construction under section 5A of the Act which was subsequently inserted by Act no.61 of 1980 and brought into force with effect from 20.12.1980.

4. I see no merit in this contention. Section 5A of the Act reads as follows:-

"5-A. Power to remove unauthorised constructions, etc.--(1) No person shall--

(a) erect or place or raise any building or any movable or immovable structure or fixture,

(b) display or spread any goods,

(c) bring or keep any cattle or other animal,

on, or against, or in front of, any public premises except in accordance with the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy such premises.

(2) Where any building or other immovable structure or fixture has been erected, placed or raised on any public premises in contravention of the provisions of sub-section (1), the estate officer may serve upon the person erecting such building or other structure or fixture, a notice requiring him either to remove, or

to show cause why he shall not remove such building or other structure or fixture from the public premises within such period, not being less than seven days, as he may specify in the notice; and on the omission or refusal of such person either to show cause, or to remove such building or other structure or fixture from the public premises, or where the cause shown is not, in the opinion of the estate officer, sufficient, the estate officer may, by order, remove or cause to be removed the building or other structure or fixture from the public premises and recover the cost of such removal from the person aforesaid as an arrear of land revenue.

(3) Where any movable structure or fixture has been erected, placed or raised, or any goods have been displayed or spread, or any cattle or other animal has been brought to be kept, on any public premises, in contravention of the provisions of sub-section (1) by any person, the estate officer may, by order, remove or cause to

> be removed without notice, such structure, fixture, goods, cattle or other animal, as the case may be, from the public premises and recover the cost of such removal from such person as an arrear of land revenue."

Section 5A empowers the Estate Officer to serve upon the person erecting an unauthorised structure or fixture to give a notice requiring him to remove it within such period as specified in sub-section (2) where such a structure 'has been erected'. The Estate Officer is empowered to do so himself in case the noticee does not comply. This section was undoubtedly enacted in the year 1980. It was clearly intended to confer power on the Estate Officer to remove all existing unauthorised structures on that date. There is no warrant for construing the section in such a manner that it empowers the Estate Officer to remove only unauthorised structures which were brought into existence after the date the section was brought into force. It is settled law that the rule against retrospective construction is not applicable to a statute merely because a part of the requisites for its action is drawn from a time antecedent to its passing. A Legislature is entitled to take note of

antecedent facts and enforce the law in the present. (See State of Bombay v. Vishnu Ramchandra (A.I.R. 1961 S.C. 307). The provision being construed cannot be characterised as retrospective in operation. 'Retrospectivity' in relation to statutes, etc. means 'operation with regard to past time' vide Punjab University v. Subash Chander (1984) 3 S.C.C. 603. The provision in question does nothing of the kind. It does remove any legal protection and thus impair an existing right; unless making unauthorised constructions on public property can be said to create a vested right. In a converse situation, the Supreme Court in Rafiquennessa v. Lal Bahadur Chetri (A.I.R. 1964 S.C. 1511) held that protection from eviction conferred by an Act upon a tenant who 'has actually built' a permanent structure on the land of the tenancy was held to cover even such cases where the structure was built by the tenant before the coming into force of the Act. Therefore, the section cannot be characterised as retrospective in operation merely because it is enforced in respect of structures which were in existence prior to its enactment. The submission of the learned counsel for the petitioner is, therefore, rejected.

5. The learned counsel for the petitioner next argued

that the Estate Officer ought to have proceeded under section 5 of the Act which deals with eviction of unauthorised occupants. There is no denial of the fact that the petitioner has put up a structure on the railway line. In these circumstances, the Estate Officer, in my view, was fully justified in invoking section 5A which was specifically introduced to mainly remove unauthorised construction, etc. Merely because as a result of the removal of the unauthorised construction, a person cannot occupy the public land on which the structure was constructed would not vitiate the notice. Section 5 is intended to apply to premises which are simplicitor unauthorised occupation and section 5A is intended to empower the public authorities to mainly remove unauthorised construction.

6. At this juncture, I might mention that the petitioner declined to seek any time to remove the unauthorised construction on his own even before this Court.

7. In the result, there is no merit in this petition which is hereby dismissed. The rule is discharged.

8. Certified copy expedited.

S.A. BOBDE, J.